*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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+WRIT PETITION No.29959 of 1995

%Dated 25-07-2007

#B.Srinivasa Rao

… Petitioner

VERSUS

$The Andhra Bank
Central Office, rep by
Chairman & Managing Director,
Hyderabad
And others

… Respondents

! Counsel for Petitioner : Sri W.B.Srinivas

^Counsel for Respondents: Sri S.Udaychala Rao.

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> HEAD NOTE:

? Cases referred

1. AIR 1963 SC 1723
2. AIR 1975 SC 2151
3. AIR 1976 SC 1080
4. AIR 1983 SC 1102
5. (1996) 6 SCC 750
6. (2000) 1 SCC 416
7. AIR 1997 SC 1030
8. (2006) 2 SCC 584

9. (1994) 6 SCC 651

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Between:

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.29959 of 1995

ORDER:-

This writ petition is filed for a writ of certiorari to quash the proceedings contained in letter No.666/ED/Sctt/42 dated 2.12.1994 of the Executive Director, Andhra Bank (for short 'The Bank') and the letter dated 15.4.1995 of the Chairman and Managing Director of the Bank and for a consequential direction to the respondents to treat the petitioner to be continued in services of the Bank as its General Manager with all consequential benefits.

The facts that are necessary for the disposal of the writ petition are narrated hereunder:

The petitioner joined respondent No.1 - Bank as Assistant General Manager before it was nationalized. Respondent No.1 -Bank was nationalized in the year 1980 and at the relevant point of time the petitioner was working as the General Manager of the Bank. With a view to extend the Bank's activities to housing and merchant banking and financial services, like other nationalized banks such as Canara Bank, State Bank of India, Bank of India etc., the petitioner established

two subsidiary companies; one for merchant banking, housing and financial services and the other for allied activities. This writ petition is concerned with one of the two subsidiary companies namely; Andhra Bank Financial Services Limited (for short 'ABFSL'). It was constituted on 25.2.1991. The Reserve Bank of India conveyed its No Objection vide its letter dated 6.12.1990 for setting up a wholly owned merchant banking subsidiary for undertaking equipment leasing, hire purchasing, merchant banking and activities incidental thereto. The said letter contains certain conditions which include a condition that the ABFSL shall not undertake activities other than those mentioned in part-II without RBI's prior approval. In the annexure to the said approval it was clearly mentioned that ABFSL shall not carry out any other business under Section 1(a) to (o) of the Banking Regulation Act 1949 without prior approval of the RBI. The Department of Economic Affairs (Banking Division), Ministry of Finance, Government of India also gave its approval for setting up of the financial subsidiary of the Bank through its letter dated 17.1.1991 wherein it was stipulated that the Bank shall ensure that the Subsidiary follows the guidelines given by the RBI and that it will not undertake any business other than that is permitted by the RBI without seeking prior approval of the RBI.

On the eve of promotion of two executives of the Bank as General Managers, the Bank has issued an office order whereby work was distributed among the five General Managers including the petitioner. The work that was entrusted to the petitioner reads "Legal, Financial Subsidiary & Housing Subsidiary". On the appointment of the Managing Director, the Board of Directors of ABFSL issued an office order on 27.8.1991 wherein he was delegated with full power of purchase and sale of Central, State, other securities, shares, bonds for deployment of short term funds.

The petitioner signed three security receipts (marked as Exs.S-18, S-19, S-20) on 31.10.1991, 2.11.1991 and 29.10.1991 respectively in respect of securities concerning Fair Growth Financial Services Limited (for short 'FGFSL') issued to M/s.Krishak Bharati Cooperative Limited (Kribhco). It is in respect of these three transactions that disciplinary proceedings were initiated against the petitioner. On 29.3.1993, Sri A.T.Akolkar, Executive Director of the Bank issued charge sheet against the petitioner which comprises five charges and they read as under:

> " 1.You have not ensured that funds of Andhra Bank Financial Services Limited were deployed only against physicals/Banker's Receipts. Instead, large funds were deployed against "Security Receipts" which have no legal backing. This fact was within your knowledge since you have signed the following security Receipts issued by Andhra Bank Financial Services Limited to M/s.Krishak Bharati Checking officials-operative Limited without satisfying yourself that Andhra Bank Financial Services Limited was physically holding the said securities.
>
> i) Security Receipt dated 31.10.1991 towards amount of Rs.10.00 crores received being the cost of 74,34,944 units of UTI of face value of Rs.10/- at the rate of Rs.13.45.
>
> ii) Security Receipt dated 2.11.1991 towards amount of Rs.2.00 crores received being the cost of 14,86,989 units of UTI of face value of Rs.10/- at rate of Rs.13.45.
>
> iii) Security Receipt issued towards amount of Rs.8.00 crores received being the cost of 7,40,000/- -9% IRFC Bonds of face value of Rs.100/- at the rate of Rs.99.2356 + interest from 1.10.1991.
>
> 2) You have put up an undated note to the Chairman among others for posting of staff to Andhra Bank Financial services Limited, wherein you have mentioned as "It may kindly be noted that Bangalore office has to be strong as we expect a good connection with fairgrowth". Basing on the above note put up by you staff department had arranged for

deputation of staff vide their office note dated 5.6.1991. Inspectors from reserve Bank of India, in the course of their inspection sometime during the month of September, 1992 have enquired as to how you were able to envisage good connection with Fairgrowth even before commencing of operations of the Andhra Bank Financial Services Limited. You have handed over on 14.9.1992, a copy of the letter dated 4.2.1991 addressed to the Chairman of Andhra Bank by Sri R.Lakshminarayana, Director, Fairgrowth Financial Services Limited with its enclosures containing proposals which are violative of the Reserve Bank of India guidelines.

Fairgrowth Financial Services Limited in their aforesaid letter dated 4.2.1991 had made very clear their intention of using Andhra Bank/Andhra Bank Financial Servides Limited as conduit for receiving funds from Public Sector undertakings through the above mentioned letter, which fact was borneout by subsequent developments that most of the Public Sector undertakings, which kept their surplus funds with Andhra Bank Financial Services Limited either under intercorporate deposits or portfolio management services were not the customers of Andhra Bank. The funds so received were passed on to Fairgrowth Financial Services Limited against Security Receipts.

Though you were aware that these transactions referred to in the letter of Fairgrowth Financial Services Limited are not in conformity with the guidelines/instructions given by Reserve Bank of India, you not only did not take any steps to prevent Andhra Bank Financial Services Limited from violating Reserve Bank of India guidelines but also failed to bring the facts to the notice of the Chairman and Managing Director of Andhra Bank and the Board of Andhra Bank Financial Services Limited/Andhra Bank.

3) The ready forward deals entered into by Andhra Bank Financial Services Limited with Fairgrowth Financial Services Limited and others were in contravention of Reserve Bank of India guidelines. Information provided to the Board on the Security transactions either seeking confirmation or for favour of information gives the false impression that these deals were outright purchases and sales and nowhere it was mentioned that they were ready forward deals. You were also aware of the fact that there was no physical delivery of securities at any

time (until May 1991). Yet, when the security transactions were reported to the Board of Andhra Bank Financial Services Limited as outright purchase/sales, you failed to report to the Board that Andhra Bank Financial Services Limited was dealing with security receipts only and not with physicals/Banker's receipts.

4) Vide Reserve Bank of India letter dated 6.12.1990, the bank was required to place before its Board at half-years intervals, as at the end of September, and March, a report on the activities of the subsidiary and business transacted by it and thereafter send the report to the Reserve Bank. As General Manager in charge of Financial subsidiaries you have failed to ensure that this instruction of Reserve Bank of India was complied with.

5) The following officers were deputed to M/s.Fairgrowth Financial Services Limited to be trained at a total cost of Rs.25,000/-.

i. Sri M.Anand.
ii. Sri T.Chacko
iii. Sri S.Varadarajan

You have not ensured that Andhra Bank Financial Services Limited derived the benefit of training received by them from M/s.Fairgrowth Financial Services Limited as is evident from the fact that no proper accounting system was evolved to be followed uniformly by all the branches of Andhra Bank Financial Services Limited and also no guidelines were framed and issued to the branches on the general functioning of the branches.

Had you acted diligently and monitored the functioning of Andhra Bank Financial Services Limited properly as the general Manager, overseeing the financial subsidiary, Andhra Bank Financial Services Limited would not have been exposed to the possible huge financial loss as is the case now. "

In response to the charges, the petitioner sent his explanation dated 15.4.1993 wherein he denied the charges. As Sri A.T.Akolkar who issued the charge sheet retired on 31.3.1993, the day on which he

has signed the charge sheet, the petitioner sent his explanation to the Chairman and Managing Director of the Bank which is the holding company of ABFSL. Not being satisfied with the explanation, the succeeding Executive Director Sri V.B.Taneja appointed Commissioner for Departmental Enquiries as enquiry officer on 11.10.1993. After holding the enquiry he submitted a report dated 5.9.1994 wherein he held the petitioner guilty of all the charges. The petitioner was given show cause notice by the Executive Director and after considering the explanation dated 9.11.1994 submitted by the petitioner, the Executive Director passed orders on 2.12.1994 whereby he imposed on the petitioner the major penalty of compulsory retirement, treating the entire period of suspension as on loss of pay and allowances. It was also directed in the said order that the suspension period shall not be treated as active service for the purpose of proposed pension scheme.

The petitioner filed an appeal to the Chairman and Board of Directors of the Bank against the said order dated 2.12.1994 and the said appeal was dismissed by the appellate authority vide its order dated 15.4.1995. Feeling aggrieved by these two orders the present writ petition is filed.

Heard Sri W.B.Srinivas, learned counsel for the petitioner and Sri S.Udayachala Rao, learned counsel representing the respondents.

Learned counsel for the petitioner submitted that the very initiation of disciplinary proceedings by Sri A.T. Akolkar, the Executive Director of the Bank, was wholly void for the reason that being a Director on the Board of ABFSL, which had ratified the transactions in question, he cannot accuse the petitioner of being responsible for improper deployment of funds against the security receipts. The learned counsel also contended that the petitioner being one among

many Directors, cannot be held responsible, in the absence of entrustment of the exclusive responsibility to him to deal with the security receipts. He further submitted that with the appointment of the Managing Director even before the transactions in question took place and in the face of the transactions having received the approval of the Board, there is no justification whatsoever to fix the responsibility on the petitioner. The learned counsel further contended that the charges framed against the petitioner are wholly baseless and that the findings of the enquiry officer, which were accepted by the disciplinary authority, are not based on any evidence and that the order of the appellate authority being cryptic and laconic, the penalty imposed on the petitioner is wholly illegal and liable to be set aside.

Per contra, Sri S.Udayachala Rao submitted that the petitioner's contention that he was not entrusted with the duty relating to acceptance of securities is incorrect in the face of the office order dated 11.05.1991 and that therefore the petitioner having been in exclusive charge of looking after the affairs of financial subsidy, cannot be allowed to disown the responsibility. Learned counsel further contended that the enquiry officer having examined the issue in detail after the full-fledged enquiry found the petitioner guilty of all the charges and the disciplinary authority having agreed with the said findings imposed punishment of compulsory retirement on the petitioner and that this Court, exercising the power of judicial review would not interfere with the punishment imposed on the petitioner.

Having regard to the rival submissions, the point that arises for consideration is whether the findings of the enquiry officer are based on any legally acceptable evidence, to sustain and justify the penalty imposed on the petitioner.

The gravamen of the charges against the petitioner is that he did

not ensure that the funds of the ABFSL were deployed only against physicals/banker's receipts and that large funds were deployed against security receipts, which have no legal backing. Before examining the issue whether charges against the petitioner are proved, it is necessary to understand the scope of the controversy. Though ABFSL was incorporated as an equipment leasing, hire purchase and Merchant Baking Company, right from the inception it indulged in sale and purchase of securities. It used to accept inter-corporate deposits from certain Governmental/Non-Governmental companies and invest such money in the sale and purchase of securities. (ABFSL was not permitted to carryon this business by the RBI vide its letter dated 6.12.1990, without obtaining prior permission from it) The whole controversy had evidently arisen when M/s.Kribhco deposited certain amounts with the ABFSL which in turn were used in the purchase of securities from FGFSL against the security receipts dated 01.10.1991, 31.10.1991 and 02.11.1991 without the actual verification as to whether the original documents constituting securities were physically received from FGFSL. The tenor of charges 1 to 4 suggests that the acceptance of security receipts without physical receipts is contrary to the guidelines issued by RBI, the petitioner played a lead role in FGFSL exploiting ABFSL in running the transactions, which are allegedly not in conformity with the guidelines/instructions given by RBI, the responsibility for the deployment of funds of M/s.Kribhco against the securities offered by FGFSL exclusively lay with the petitioner and that he failed to prevent the FGFSL from violating RBI guidelines apart from his failing to bring the facts to the notice of the Chairman and Managing Director of the Bank and the Board of ABFSL. The purport of charge No.5 is that the petitioner failed to ensure that the ABFSL has derived the benefit of the

training of three employees of the ABFSL, namely; Sri M.Anand, Sri T. Chacko and Sri S. Varadarajan received from FGFSL.

Charge No.1:

For the sake of convenience, this charge can be divided into two parts. The first part relates to the petitioner's responsibility qua the affairs of the ABFSL and the second part pertains to his issuing the three security receipts which are the subject matter of controversy.

First Part of the Charge:

In his explanation submitted to the charge sheet, the petitioner specifically pleaded as under:

> "Even otherwise, I respectfully submit that my substantive post is that of the General Manager of the Andhra Bank. ABFSL is an independent company incorporated under the provisions of the Companies Act. It has its own Articles of Association and Memorandum of Association. It has a set of Board of Directors of its own who are in-charge of framing policy guidelines for the company to undertake its transactions. It has got its own staff who will be looking after the day to day administration of the company. My job as a General Manager of Andhra Bank is an independent one and incidentally I am one of the Directors of ABFSL. In a general way, I was kept in-charge of the subsidiaries of the Andhra Bank and not that I am the whole and sole of the ABFSL. I am, therefore, a liason Director for ABFSL. I continued to discharge my primary duties as a General manager of the Andhra Bank. In this context, it is improper to make any allegations against me for every transaction or the affairs undertaken by ABFSL. ABFSL being an independent entity, its day to day affairs and administration being handled on its own, I am only one of the several Directors of the ABFSL, you would also kindly bear in mind, sir, that the CMD of Andhra bank is the Chairman of the Board of Directors of ABFSL as well, the then Executive Director of Andhra bank, Sri A.T. Akolkar, waas yet another Director of ABFSL. Sri O.

Swaminatha Reddy, the former Chairman of Andhra Bank is one of the Directors of ABFSL. Sri M.J. Pherwani, Chairman, NHB, is one other Director of ABFSL. The noted industrialist and financier, Sri V.L. Dutt is yet another Director of the ABFSL. In this configuration of the Board of Directors, it is improper to single me out for the purposes of alleging that large funds of ABFSL have been deployed against the Security receipts instead of physicals/BRs and therefore, I should alone be held responsible for it. I can at least understand that if I have taken any decision that the funds of the ABFSL should be deployed only against SRs. I have never taken any such decision. Therefore, it is unfair and improper to pick me up for levelling allegations.

In this context, it was nowhere set out either in general or specific terms that ABFSL should undertake its transactions only against physicals/BRs. In the absence thereof what ABFSL followed was in keeping with the market trends and practices and consequently deployment of its funds against SRs, does not become an illegal or improper exercise. This apart, the policy decisions of ABFSL are the result of the decisions arrived at by the collective wisdom of its Board of Directors. However, I have no overriding authority or responsibility to lay policy guidelines for ABFSL beyond whatever has been contemplated and undertaken by its well reputed Board of Directors. You will also agree with me, Sir, that barring me, the rest of the Board of Directors of ABFSL were all men accredited for their expertise in money market and the connected buoyancy therewith. Therefore, to single out a Director for having not overruled the decisions of the Board or for having not suggested a different course to be adopted by the ABFSL, is an improper act. The allegation in this regard, that I am guilty of a misconduct, would only reveal the anxiety to pass the blame on to some one rather than to collectively own it up should it be realized that the Board of Directors of ABFSL erred in their wisdom. If Sri A.T.

Akolkar, or for that matter, the Enquiry Officer had come to a conclusion that there is an error of judgment on the part of ABFSL in undertaking its transactions against security receipts instead of against physicals/BRs, then the fault would lie against the entire lot of the Board of Directors of ABFSL for having not laid a crystal clear policy in that regard directing the ABFSL not to deploy funds against 'Security Receipts' and deploy its funds only against physicals. The fault at any rate does not lie against one single Director, B. Sreenivasa Rao. Collective wisdom prevails and consequently Sri A.T. Akolkar himself should be held as much responsible for the lapse, if any, in this regard. Equally the then CMO, Sri K.R. Nayak should also be held responsible. If that be the case, there will be no end in trying to find fault with one other and it would be an unending process. Therefore, it is neither fair nor proper to lay a charge of misconduct, of all things, against me. This aspect of the matter has been completely ignored by the Enquiry Officer."

In support of the charges, the company examined SW.1, the Managing Director of the ABFSL and SW.2, Chief Officer, C & IFA of Andhra Bank, Central Office, Hyderabad.

SW.1 in his chief-examination deposed as follows:

"The Managing Director of the company is the whole time Director of the company duly delegated with the following powers in the meeting dated 27.08.1991 (Resolve that in modification of the resolution passed at the Board meeting held on 14.06.1991, Managing Director be and is hereby delegated with full powers to purchase, sale of Central, State, other securities, shares, bonds for deployment of short term funds). As per Ex.S.3, Shri B.Sreenivasa Rao was entrusted with the following work distribution (Legal, Financial Subsidiary and housing subsidiary). The work is allocated to the General Managers in the bank and they are supposed to

> supervise, monitor and control the works allocated to them. For investment of funds, M.D. is authorized by the Board to take decisions. **All Directors are equally responsible on the Board**. He has additional responsibilities as G.M. of Andhra Bank because he has been specifically allocated the work of supervision of financial subsidiary." (emphasis added)

In his cross-examination, SW.1 stated that "as per memorandum of Articles of the company (Clause 96) business of the company shall be managed by the Board of Directors, who may exercise all such powers of the company, as are authorized by the Companies Act 1956. The Managing Director or whole time Director shall have subject to the supervision, control and discretions of the Board, the Management of the whole of the business of the company and of all its affairs and shall exercise all powers and perform all duties as are required by law or by these presents to be exercised or done by the company in general meeting. Articles of the company do not specifically state any role to the G.M. of the Andhra Bank." This witness further stated "**there are no records available with the company indicating a role, responsibility to the General Manager other than the office work distribution order**. There is no other document issued by the then Chairman or Executive Director of the company on record other than Ex.S3 to Sri B. Sreenivasa Rao". It is further stated that "the Managing Director of ABFSL was assisted by a team of staff consisting of Senior Vice President and Assistant Vice President. There is no evidence on record that Sri B. Sreenivasa Rao was attending the day to day activities of the company except signing Exs.S18 to 20, S25 to S33 and subscribing the facsimile signature on the FD interest warrants." (emphasis added)

The petitioner in his chief examination stated that he has no role

to play in the day-to-day management of the ABFSL. A reading of the enquiry report shows that before the Enquiry Officer the petitioner has reiterated the stand taken by him in his written explanation that as per the Memorandum of Articles of Association of the company, Managing Director and the whole time Director were authorized to carry on the management of the whole of the business of the company and of all its affairs subject to the supervision and control of the Board, that by a Board's resolution dated 27.08.1991, full powers were delegated to the Managing Director for purchase/sale of securities and deployment of short term funds, the Managing Director was functioning under the supervision of the Board and not of the petitioner and that the office order dated 11.05.1991 (Ex.S3) issued by A.T. Akolkar, Executive Director, does not specifically mention that the petitioner was supposed to supervise all the functioning of the subsidiary, no specific duties or work were allocated to the petitioner with regard to the subsidiary by the said office order. The petitioner also specifically pleaded to the enquiry officer that in his confidential report submitted to the Executive Director against column "Duties allotted", he has never stated that he was holding the charge of subsidiaries and that neither the Managing Director had submitted any papers/notes to the petitioner nor the Board notes were put up through him. He further explained that Ex.S3, office order was issued as the Managing Director was not appointed at that time and that with the appointment of the Managing Director on 14.06.1991 on a whole time basis, the said office order automatically ceases to be valid and that there is no evidence on record to show that the petitioner was attending the day-to-day management of the company. He further maintained that he signed few security receipts and subscribed his facsimile signatures on the FD/interest warrants (Exs.S.18 to S.20, S.25 to S.33) and that

when the Managing Director delegated the full powers for deployment of funds vide Board's resolution dated 27.08.1991, the charge that the petitioner was not ensuring deployment of funds against physicals/BRs cannot be sustained. The petitioner further pleaded that he had signed the three security receipts issued to Kribhco (Exs.S18 to S20) based on purchase contracts and other records produced before him by the Senior Vice President while obtaining his signatures and his signing the receipts merely amounted to **an act of managing the receipt of funds and no decision making was involved**. He also pleaded that he was not concerned with the day to day deployment of the funds of the company and that he was not even aware how the funds were deployed by the company as nobody was reporting the transactions with him. The petitioner also maintained that he had signed the three receipts issued to M/s.Kribhco as one of the Directors of ABFSL and that it was the responsibility of the staff of the company to ensure that physical securities/BRs were on record as they were looking after day to day transactions of the company. He also stated that security/bank receipts against the said three transactions were later obtained from FGFSL and Sri Hiten P. Dalal and that the transactions were closed.

Effect of the Office Order dated 11.5.1991 (Ex.S-3):

The enquiry officer laid heavy emphasis on the office order dated 11.05.1991 in arriving at the conclusion that the petitioner was responsible for failing to ensure deployment of funds against physicals instead of security receipts.

With reference to Ex.S3, as already noted, the petitioner's contention is two fold. Firstly, Ex.S3 is only general in nature and that no specific duties or work were allocated to the petitioner with regard to the subsidiary company (ABFSL) and secondly, the said office order

ceases to be valid with the appointment of the whole time Managing Director in August 1991 and the resolution dated 27.08.1991 under which full powers were delegated to the Managing Director for purchase/sale of securities and deployment of short term funds. Though the enquiry officer referred to the contention regarding Ex.S3 ceases to be valid with the appointment of the whole time Managing Director on 14.06.1991 he has not specifically dealt with it.

Ex.S3, office order reads as follows:

"No.666/13/
11th May, 1991.

OFFICE ORDER

Consequent on the promotion of the two executives as General Managers, the following distribution of work amongst General Managers is made with immediate effect until further orders.

1. Shri M.Gopalakrishnaiah - Staff, Personnel, Accounts CPPD

2. Shri B.Srinivasa Rao - Legal, Financial Subsidiary & Housing Subsidiary

3. Shri B.Kamath (CVO) - Vigilance, Inspection, Management, Audit, Security.

4. Shri Ch. Raja Rao - Corporate banking Operations including priority sector and credit card.

5. Shri G.Malakonda Reddy - Planning & Development

Sd/-.
(A.T. AKOLKAR)
EXECUTIVE DIRECTOR"

A reading of the above reproduced office order indicates that the work among the five General Managers of the Bank was distributed and the petitioner is entrusted with the work “Legal, Financial Subsidiary and Housing Subsidiary”. This case concerns “Financial Subsidiary” (ABFSL). Except making a reference to the company, the precise nature of duties entrusted to him is not specified in the said office order. The enquiry officer reasoned that being the General Manager of the Bank, with the specific entrustment of the affairs of the Financial Subsidiary (ABFSL) it must be presumed that the petitioner is entitled to exercise all supervisory powers including calling for any information/file etc., and that therefore the petitioner cannot contend that it is not his responsibility to ensure proper deployment of funds against physical receipts. While arriving at this conclusion, curiously, the enquiry officer rejected the contention of the petitioner that the company is a separate legal entity. This rejection is based on his reasoning that it is the subsidiary of the Bank. This reasoning of the enquiry officer cannot be sustained. Ex.S4, proceedings dated 06.12.1990 and Ex.S5, letter dated 17.01.1991 addressed by the Government of India to the Chairman of the Bank show that the bank was permitted to set up a Fully Owned Merchant Banking Subsidiary. In pursuance of the said permissions, a separate company was incorporated. Though the company is wholly owned subsidiary of the Bank, still it is a separate corporate entity in law. It is not in dispute that the company has got its own memorandum and articles of association and a separate Board of Directors different from the Board of Directors of the holding company, namely; the Bank. Merely because some of the Directors of the Board including Chairman of the Bank happened to be on the Board of the company, the latter’s corporate status and its separate juristic entity are not affected.

As regards the reasoning of the enquiry officer that as a General Manager of the Bank, the petitioner, who was assigned the duty of looking after the company, has more responsibilities than an ordinary Director of the company has, as extracted hereinabove, SW.1 in his deposition categorically admitted that in resolution dated 27.08.1991, the Managing Director is delegated with full powers to purchase and sell Central, State and other securities, shares, bonds for deployment of short term funds. While Ex.S3 was issued before the whole time Managing Director was appointed and on a liberal construction of the said document even if it can be said that the petitioner was entrusted with the overall supervision of the affairs of the company (though in the absence of assignment of specific duty), with the resolution dated 27.08.1991 which specifically delegated the power to purchase and sell the securities for deployment of short term funds to the Managing Director, Ex.S3 office order can not be said to survive any longer for two reasons. 1) Ex.S3, office order was issued by the Executive Director of the Bank (holding company), while the resolution dated 27.08.1991 was passed by the Board of Directors of ABFSL, which is the apex decision making body of the company, and 2) while Ex.S3, office order was general in nature, the resolution dated 27.08.1991 is specific with regard to the powers entrusted to the Managing Director *iner alia* to purchase and sell the securities for deployment of short term funds.

In my view, the enquiry officer has completely failed to understand the scope and deal with the effect of the resolution dated 27.08.1991 of the Board on Ex.S3, office order, which was issued only by one of the Directors of ABFSL before a whole time Managing Director was appointed. The weird reasoning of the enquiry officer that being the General Manager of the holding bank, the petitioner has the

responsibility of overall supervision and the power to summon all the records of the company has no legal basis at all. Merely because the petitioner happened to be the General Manager of the holding bank, in the absence of specific conferment of powers and entrustment of duties to him either under the memorandum or articles of association or by the decision of the Board of Directors, it cannot be assumed that he was superior to or different from any other Director of the Board of the company or that he has any other additional responsibility over and above what was specifically entrusted to him. The contention of the petitioner that he was never in the day to day management of the affairs of the company was not contradicted by producing any material against him during the enquiry. On the other hand, SW.1 candidly admitted that the articles of the company do not specifically state any role to the General Manager of the Bank and that there are no records available in the company indicating any role or responsibility to the General Manager other than the office work distribution order. He also admitted that there is no other document issued by the then Chairman or Executive Director (of the holding company) on record other than Ex.S3 to the petitioner. He further admitted that there was no evidence on record that the petitioner was attending to the day to day management of the company except signing Exs.S18 to S20, S25 to S33 and subscribing the facsimile signature on the FD interest warrants. Since the Board of Directors had specifically entrusted the power of purchase and sale of securities for deployment of short term funds to the Managing Director vide resolution dated 27.08.1991, it cannot be said that the petitioner was in any way responsible to purchase or sell the securities for deployment of funds. I am therefore of the considered view that the first part of the charge, namely; that the petitioner failed to ensure that funds of the company were deployed

only against physicals/bank receipts and that large funds were deployed against security receipts, which have no backing, cannot be sustained and consequently the finding thereon that the petitioner is guilty of that part of the charge cannot be equally be sustained.

The second part of Charge No.1:

This part of the charge can be construed as illustrative of the first part of the charge. The reading of the charge as a whole shows that while the primordium of the charge against the petitioner is that he failed to ensure deployment of funds against physicals/bankers receipts, the fact that he signed three security receipts is cited as instances of proving the first part of the charge. The accusation against the petitioner in this regard is that he signed the three security receipts without satisfying himself that the company was physically holding the securities.

The petitioner in his detailed explanation, submitted to the Executive Director of the Bank in reply to the notice issued after the enquiry officer submitted his report, while maintaining that he was no way responsible for deployment of funds against security receipts, he stated that essentially there is not much distinction or difference between a bankers receipt and security receipt; that while the banking companies, which are members of Indian Bank Association alone are entitled to issue banker's receipts, other non-banking companies and financial services companies, who are not members of Indian Bank Association, are not entitled to issue banker's receipts; that the latter category companies evolved a process by which they issue security receipts and that National Housing Bank (NHB), a wholly owned subsidiary of RBI, not being the member of the Indian Bank Association, started issuing security receipts and that following this

example the rest of the financial services companies floated by the various banks in the country also started issuing security receipts. He cited the examples of Canfina Limited floated by Canara bank, IND Bank Financial Services Limited of Indian Bank, PNB Financial Services Limited of Punjab Bank and BOI financial Services Limited of Bank of India. He stated that the contents of banker's receipts and security receipts are identical and that the practice of deployment of funds which is adopted by various financial companies including NHB is being adopted by ABFSL and that therefore this practice cannot be termed as objectionable or constitutes misconduct. He referred to the evidence of SW.2, who admitted in his chief-examination that in the matter of purchase and sale of securities, a contract note for each deal giving details of the security, price, etc., is raised and payment is made against **either a banker's receipt or a security receipt or physical delivery.** He therefore pleaded that the very charge that the petitioner has not ensured that the funds of the company are deployed only against physical/banker's receipts cannot be sustained or his signing the receipts without receiving the physicals cannot be termed as misconduct or irregularity.

Before examining whether the signing of the security receipts by the petitioner without verifying whether physical securities were actually received by the company constituting misconduct, I would like to examine as to what are the activities which the company is permitted to carry on. As mentioned earlier the Reserve Bank of India gave its no objection vide Ex.S4 dated 06.12.1990 to the bank to set up the company, which is fully owned merchant banking subsidiary for **undertaking equipment leasing, hire purchase, merchant banking and activities incidental thereto** and the proposed subsidiary shall not undertake any activities other than the aforementioned activities

without RBI's prior approval. Annexure to the said letter contains the terms and conditions governing the approval. Clause (i) of the Annexure reads as follows:

> "The subsidiary shall confine itself strictly to equipment leasing, hire purchase and merchant banking business and activities purely incidental thereto. It shall not carry on any other business set out under Section 6(1)(a) to (n) of the Banking Regulation Act, 1949 without the specific prior approval of the Reserve Bank."

Section 6(1)(a) of the Banking Regulation Act, 1949, which finds a mention in the above extracted clause reads thus:

> "The borrowing, raising or taking up of money; **the lending or advancing of money either upon or without security**, the drawing, making, accepting, discontinuing, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying selling and dealing in bullion and specie; the buying ad selling of foreign exchange including foreign bank notes; **the acquiring, holding, issuing, on commission, under writing and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds**; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities." (emphasis added)

Government of India vide Ex.S5 dated 17.01.1991 under which no objection was given to the Bank to set up ABSFL, also referred to

the terms and conditions contained in the letter dated 06.12.1990 whereunder RBI granted permission and stated that the bank must ensure to follow guidelines given by RBI and that it should not undertake any business other than that is permitted by RBI without seeking prior approval of RBI. The bank was also directed to obtain the approval of the Securities and Exchange Control Board of India.

It is not the case of the company that it has ever sought for or obtained the permission of RBI to deal with in securities, which activity is forbidden without prior approval of RBI. Be that as it may, the accusation against the petitioner as noted earlier is that he has not ensured receipt of physical securities from FGFSL before signing the SRs. The petitioner's defence in this regard is that while the Banking Companies issue Banking Receipts (BRs), others issue SRs with or without physicals and this system is prevalent in all similar financial subsidiaries. This stand of the petitioner is fortified by the evidence of S.W.2 and paragraph IX of Janaki Raman's report marked as Ex.D3. A reading of the said report shows that the subsidiaries of Indian Bank (Indbank Merchant Banking Services Limited) and Kotak Mahindra Bank (Kotak Mahindra Finance Limited), which are also permitted by the RBI only to undertake merchant banking besides equipment leasing and hire purchase business and activities purely incidental thereto, similar to ABFSL company earn overwhelming percentage of income through ready forward transactions by deploying funds by accepting security receipts without receiving actual physical securities. It is appropriate to extract the relevant portions of this report hereunder:

> " A. <u>Indbank Merchant Banking Services Limited:</u>
>
> ……
>
> B. The company was actively involved in ready forward transactions in units of UTI, PSU bonds and shares during the

period of 1st April 1991 to 30th June 1992 with such deals accounting for 93.04 percent of the total deals aggregating Rs.4125.89 crores. The ready forward deals were routed mainly through Kotak Mahindra Finance Ltd. (31.25 percent), D.S.Purbhoodas (15.63 percent) and Batliwala & Karani (10.37 percent0. There was no approved panel of brokers nor was any broker-wise or bank-wise exposure limit fixed by the Board of IMBSL. **In most of the cases company officials exceeded their delegated powers in deployment of funds through ready forward deals. These transactions were treated as a matter of routine and ratification was never sought**. The investments often exceeded the powers of even the company's Chairman (who was Indian Bank's Chairman) but there is nothing on record to show that such excesses were placed before the Board for approval. **Top management, however, did not object, thus giving tacit approval to such transactions.**

C. Deals with Kotak Mahindra Finance Ltd.

(a) Scrutiny of some of the large inter-corporate deposits accepted from PSUs reveals that a good proportion thereof was placed with Kotak Mahindra Finance Ltd., (KMFL) in ready forward transactions.

(b) **The company took the risk of accepting security receipts issued by KMFL instead of actual physical securities**. It also accepted in one case a third party BR issued by Citibank favouring KMFL, in a deal made on 16th April 1991.

(c) **In some deals with KMFL (as counterparty), funds were parted without obtaining any security.** For example, on 20th April 1991 an amount of Rs.5.06 crores was paid to KMFL for purchase of 34 lakh units of UTI **without receiving physical units or a BR.** The transaction was reversed on 22nd April 1991.

D. The company did not maintain any register or record to show the receipt or delivery of securities under ready forward deals. **Thus, it was not ascertainable whether the securities were actually received or not**." (emphasis added)

The relevant portion of the deposition of S.W.2 is extracted

hereunder:

> "Ex.S-23 indicate that this market is by and large a Bank/Money receipt market rather than a physical securities market. What Fairgrowth proposed is not in conformity with the then existing guidelines of the RBI. The note dated 31.07.1992 (Ex.D.10) reads that the practice followed is that deals were negotiated and finalized on the basis of best offers received. In the matter of purchase and sale of security, a contract note for each deal giving details of the security, price etc., **is raised and payment made against bankers receipt (BR) and security receipt or physical delivery.** Where purchase and sale is concluded within a short period, the transaction is squared up with return of discharge of bank receipt or security receipt. **The transactions were reported to the Board of ABFSL as purchase sale transaction once in three months.** Only once a report as on the end of March 1992 on the activities was placed before the Board of Andhra Bank in June, 1992." (emphasis added)

In his cross-examination, SW.2 stated that "the directions given by the RBI were addressed to the Chairman of the Bank vide letter dated 06.12.1990 (Ex.S.4) and he was to comply with the directions. **As per the report submitted by the Janakiraman Committee the true role of ABFSL appears to have been done with the full knowledge of and under the direction of the bank's top management.** All the sale and purchase transactions of investment whether on outright basis or ready forward one accounted in the account called 'Investment Account'. (emphasis added)

The aforementioned evidence of SW.2 is fully corroborated by the note dated 03.06.1992 (part of Ex.D8) submitted by the Managing Director of the company, which was evidently prepared for and placed in the 8th Board meeting of the company held on 16.06.1992. In this note it is made very clear that the company has been accepting funds from corporate bodies and other constituents under two heads, namely; 1) on investment basis, and 2) as inter-corporate deposits. It

is stated that in the investment schemes, securities are purchased and sold to the constituents. On the completion of the holding period, the securities are repurchased from the constituents and sold again. It is further stated that the investments and securities are against issue of BRs/SRs, **which are converted into physicals within a few days.** The said note also mentions the transactions involving FGFSL and H.P. Dalal to the extent of Rs.201.07 and Rs.156.70 crores under the head 'Physical'. The minutes of the 8th Board meeting of the company held on 16.06.1992 reveal that the Board resolved that the transactions made by the company in purchase and sale of securities/bonds/units/debentures and shares as per the detailed statement submitted to the RBI up to 23.05.1992 and a copy of which was submitted to the Board and initialed by the Chairman were noted.

The aforementioned documents unmistakably prove two aspects, namely; 1) that the Board as a policy was adopting the purchase of securities against the issue of BRs/SRs initially, which will be converted into physicals a few days later, and 2) all transactions taken place including the disputed transactions under Exs.S.18 to S.20 are placed before the Board of Directors of the company in its 8th Board meeting held on 16.06.1992 and the Board has not taken any exception to the manner in which the security receipts were issued under the signature of the petitioner. The minutes of the said meeting further reveals that the said meeting was attended by Sri K.R. Nayak, Chairman, Sri A.T. Akolkar, Director of the company and the Executive Director of the Bank, the petitioner who is a Director of the company and the General Manager of the Bank, Sri D. Swaminatha Reddy, Director of the company and Sri Y. Surendra Babu, Managing Director of the company.

The aforementioned material further shows that the permitted

activity of the company was confined to equipment leasing, hire purchase, merchant banking and activities purely incidental thereto. Clause (i) of the annexure prohibits the company from undertaking the business set out under Section 6(1)(a) to (n) of the Banking Regulation Act, 1949. The business mentioned in Section 6(1)(a) includes lending or advancing of money against securities upon or without security. However, the fact remains that the ABFSL and other similarly placed subsidiaries of nationalized banks freely undertook the activity of advancing monies against securities and earned huge income through the said activity evidently without the specific authorization given by the RBI. Thus, viewed from larger perspective, the very deployment of funds against accepting securities without the specific permission of the RBI (whether physical or otherwise) itself was unauthorized. That being so, the accusation against the petitioner that he signed the three receipts without ensuring receipt of physical securities pales into insignificance. I am really surprised that no one has addressed the major issue whether the very activity of the company carried on, namely; deployment of funds against security, which is not permitted by the RBI was at all permissible.

Be that as it may, from the aforementioned evidence of SW.2, it is very clear that the company was all through advancing funds by purchase and sale of security against banker's receipt and security receipt or physical delivery. This unequivocal statement of SW.2 coupled with the aforementioned note (Ex.D8) submitted by the Managing Director and the Board's resolution passed in its 8th Board meeting dated 16.06.1992, after considering all the transactions that have taken place pertaining to purchase and sale of securities/bonds/units/debentures and shares, clearly shows that the company was not only not strictly following the norm of advancing

monies only against physical delivery, but also it was following the practice of issuing banker's receipt or security receipt. SW.2 also quoted Janakiraman's Committee report as saying that the activities were carried on by the company with the full knowledge of and under the directions of the bank's top management and that all the sale and purchase transactions of investment whether on outright basis or ready forward basis were accounted in the account called 'Investment Account'.

Thus, the evidence available on record makes it abundantly clear that the monies of the company were deployed not only against physical receipt of the securities, but also otherwise and this was carried on with the full knowledge of and under the direction of the bank's top management. This being so, it is wholly incomprehensible as to how the petitioner could be singled out and blamed for either failing to ensure deployment of the company's funds against physical receipt of securities or his signing the three security receipts without ensuring physical receipt of the securities. It is clear from the above discussed evidence that not only the Board of Directors of the company had full knowledge of the funds deployment against security receipts, but also all the transactions were placed before it on 16.06.1992 and at no point of time, did the Board take exception to the method of deployment of funds against security receipts. It is interesting to note that Mr. A.T.Akolkar was a part of the Board being the Executive Director of the Bank and also a Director of the company and he was as much a part of decision making process as any other Director. One is at a loss to know how he was able to absolve himself of the responsibility of deployment of funds against security receipts even if the petitioner had signed three of them when the Managing Director of the company was evidently not available. In the absence of

anything to show other than Ex.S3, office order and in the face of the Board's resolution dated 27.08.1991, it is not possible to believe that on mere signing by the petitioner of the three disputed transactions i.e., Exs.S.18 to S.20, the company's funds were released.

At this juncture, it is relevant to note the defence of the petitioner. In para-12 of his elaborate explanation given to the disciplinary authority on the enquiry report, he has taken a specific stand that he signed the three receipts issued in favor of M/s.Kribhco as a token of money receipt and that they are not even security receipts. He maintained that the said documents were nothing more than that of a mere acknowledgement of money receipt and that the format on which he signed was furnished by M/s. Kribhco, which is wholly owned by the Government of India. He further stated that these documents came to be signed by him in the absence of the Managing Director of the company and that prior to his signing the three documents, he had the advantage of these documents being processed by the staff of ABFSL and approved by none other than the senior Vice President of the company. This part of the explanation of the petitioner is completely ignored by the enquiry officer.

I have carefully gone through the order of the disciplinary authority and I am of the considered view that it had failed to consider the elaborate submissions of the petitioner. The disciplinary authority (the Executive Director of the Bank and the Director of the company) virtually reiterated the findings of the enquiry officer and simply negatived every contention raised by the petitioner as untenable. He also proceeded on the basis that the petitioner is squarely responsible for deployment of funds against security receipts only on the basis of Ex.S.3. He also failed to consider the effect of the resolution of the Board of Directors of the company which had given full powers for

purchase and sale of securities for deployment of short term funds in the securities to the Managing Director of the company. Therefore, the whole accusation against the petitioner, that he failed to ensure proper deployment of funds against receipt of physical securities is wholly baseless not being supported by any evidence. If one is to blame anybody for this so called irregularity/illegality, it is the entire Board including the disciplinary authority (A.T. Akolkar) and the appellate authority (the Chairman of the company), who were at the helm of the affairs of the company and who are parties to the purportedly defective procedure which evidently caused financial loss to the company.

On a careful reading of the entire material available, I feel that the accusation of the petitioner against Sri A.T.Akolkar, who issued the charge sheet evidently in a hurry on the day of his retirement that this was done as a measure of vengeance against the petitioner is not without justification. Obviously, when the heat was turned on the company for its landing in soup by pursuing wrong policy in dealing with securities, the top management found in the petitioner a scapegoat to save their own skin.

For the aforementioned reasons, I am of the view that the finding of the enquiry officer on charge No.1 as accepted by the disciplinary authority and affirmed by the appellate authority is not only not based on any evidence, but is against the evidence available on record.

CHARGE No.2

The accusation against the petitioner in this charge is also in two parts, namely; that the petitioner had put up an undated note to the Chairman indicating therein that ABFSL is expected to have good connection with FGFSL and that therefore the Bangalore office has to be strong and the petitioner's handing over letter dated 04.02.1991

addressed by the Director of FGFSL to the Chairman of the Bank was noted and enquired by inspectors of RBI as to how the petitioner was able to envisage good connection with FGFSL. It is further alleged that the activities mentioned in letter dated 04.02.1991 of FGFSL were not in conformity with the guidelines/instructions given by RBI and the petitioner did not take steps to prevent ABFSL from violating RBI guidelines and that he further failed to bring the facts to the notice of the Chairman and Managing Director of the Bank and the Board of ABFSL/the Bank.

In order to appreciate the scope of the charge, it is necessary to extract Ex.S23, letter dated 04.02.1991 and the undated note.

"FAIRGROWTH FINANCIAL SERVICES LIMITED

Regd. Office "Park West", 22/11, Vittal Mallya Road,
Bangalore-560 001, Phole 214802/217845.

FGFSL:RO:1014:91 Date: 4.2.1991

The Chairman,
Andhra Bank,
Central Office II,
6-3-653, Pioneer House,
Somajiguda,
Hyderabad 500 482.

Dear Sir,

KIND ATTN : MR. Y.SUNDARA BABU, DEPUTY GENERAL MANAGER

This has reference to the discussion Mr. Sundara Babu had witnessed today with regard to business association of our company with your esteemed Bank. In this regard, we would like to mention the following points for your kind consideration.

Ours is a company incorporated under the Companies Act, 1956, Headquartered at Bangalore with branches at Delhi, Bombay, Calcutta, Madras, Bangalore, Hyderabad and Cochin. The paid up capital of the Company will be Rs. 9 crores after the public issue is made.

Our company is engaged in the following services:

a. Merchant Banking in all its aspects.
b. Hire Purchase Financing.
c. Consumer Durable Financing.
d. Equipment leasing.
e. Portfolio Management.
f. Providing other industrial/financial consultancy services.

The Corporate Brochure of the company is enclosed for your kind perusal/information.

The company has got experienced and seasoned bankers as top executives. We have also in our rolls young and professionally qualified persons like Chartered Accountants, M.B.A's, Company Secretaries and Engineers to undertake and execute the assignments.

With our experience and expertise, we want to build up this organization as a professionally managed organization. After the clearance from SEBI for taking up merchant banking activities we are involved in Public/Rights Issues of 30 companies. In some of the Public/Rights issues we are associating as one of the lead managers also.

With our professional competence, we can be involved for the following services with your Bank.

A. Establishing systems/procedures and providing other start up services for your Financial Services subsidiary which is proposed to undertake Equipment leasing, Hire Purchase and Merchant Banking activities. Under the Head start up services, we can provide:

a. Establishing accounting system.
b. Recruitment of Personnel.
c. Preparation of the Brochures for the various activities.
d. Preparation of the documents for leasing and Hire purchase financing.
e. Establishing other systems and procedures for smooth functioning.

B. Under 'a' back to back arrangement, we can market and

tie-up lease finance for the subsidiary. We are entering into similar arrangement with JFCL, New Delhi.

C. Your Bank can discount trade bills backed by an inland irrevocable letter of credit opened by a scheduled commercial bank on the basis of the rediscount of the same bills secured for you by us from Apex Financial Institutions. The details of the scheme are given in Annexure-I.

D. Fairgrowth Financial Services Limited proposed to deal actively in major money market securities like Government securities, Guaranteed bonds, Units of UTI, Tax free/Taxable Public sector bonds, Treasury bills, Commercial paper, Certificate of deposits etc. Your Bank will act as our bankers for carrying out the money market operations on your behalf. The broad requirements of this activity are given in Annexure-2.

We request you to involve our company in respect of the various services we can offer to your bank. The fees for the services referred herein can be decided as per mutual discussion and consent.

We also hereby give our consent to involve your bank in the capital issues wherein we will be associating as one of the managers.

We shall work out the details and the modalities of operations after our proposal is considered and approved by you.

Thanking you,

Yours faithfully,

Sd/-
R. LAKSHMINARAYANA
DIRECTOR (FIN & ADMN)"

The offending undated note put up by the petitioner, marked as Ex.S.21, reads as follows:

"BANGALORE

Mr. T. Chako, MM-III Officer, presently working as Manager Trivandrum Branch as Senior Vice President, Mr. Raj Kumar, MM-II Officer presently working as Manager, Cook Town Branch as Vice President and Mr. Eswar Prasad, MM-II Officer, presently working as CCD, Zonal Office, Hyderabad as Vice President.

It may kindly be noted that Bangalore office has to be strong as we expect a good connection with "Fair Growth" and as we also expect good business from Bangalore and Coimbattore and the Bangalore office should be capable of catering to clientale in Kerala also. It is needless to point out that the financial services require dynamic and proven managers and officers with good record of public relations. Especially at the initial stage, unless a proper image is build up, it should be difficult at a later stage to grow rapidly and in a healthier way."

As regards the preparation of note in question, the petitioner explained that he prepared the said note for the purpose of holding discussions with CMD of the Bank and that it is customary that before discussions of significance and importance and deliberations with certain high ranking dignitaries are undertaken a small note is always prepared before hand for the purposes of serving the officer participating in the discussions later on usefully and that no significance or importance need be attached to a note prepared before the discussions are held. The note marked as Ex.S.21, consists of two parts and the first part contains matters relating to posting of staff, location of head office, inauguration of subsidiary and the role of the petitioner vis-à-vis subsidiaries. The petitioner has taken the stand that when this part of the note was discussed by the petitioner with CMD, he did not approve posting of some staff members as evinced from the remarks on the said note; that this fact was also confirmed by SW.2; that thereafter the petitioner submitted another undated note

(pages 2 and 3 of Ex.S.21) incorporating the CMD's suggestions. The petitioner therefore took the stand that the CMD himself had informed him that he was expecting good connection with FGFSL and that he wanted him to incorporate this fact in the note while asking for additional staff.

With respect to the letter dated 4.2.1991, it was the case of the petitioner that it was addressed by the FGFSL to the Chairman of the Bank, that there is nothing objectionable in the contents of the said letter, or the Board before which the said letter was placed by the CMD in its meeting held on 14.06.1991 found nothing objectionable with it. In his explanation submitted to the disciplinary authority he further maintained that during the course of enquiry, the petitioner read out the contents of the said letter several times to the enquiry officer and that he failed to point out which portion of the said letter could be considered objectionable requiring the petitioner to take suitable remedial action. He also submitted that the inference drawn by the enquiry officer that the petitioner must have been aware of the contents of the said letter was wholly unsustainable and that all the members of the Board came to know about the contents of the said letter as soon as the Chairman placed the said letter on record on 14.06.1991 and that if at all there was anything wrong with the contents of the said letter, it was the Chairman of the ABFSL and Sri A.T. Akolkar, who is the far more experienced officer than the petitioner that would have taken objection to its contents.

The petitioner also pointed out that the charge and the finding of the enquiry officer that the RBI inspecting officers have made enquiries as to how the petitioner was able to envisage good connection with FGFSL, are wholly baseless, since no one connected with the RBI was examined though the management cited Sri R. Krishnan, Deputy

Chief Officer, RBI, Hyderabad as one of the witnesses, but however he was given up. The petitioner claimed that reason for giving up the said witness was that the RBI inspecting team indicted Sri K.R. Nayak, Chairman for his role in not properly appraising the contents of letter dated 04.02.1991 to the Board of Directors of ABFSL or the Bank though he is fully aware of the designs of FGFSL and that they have not found fault with the petitioner in this regard.

The enquiry officer in his report accepted the contention of the petitioner as regards the note prepared by him that the objectionable part of the note was put up by him after the discussions the petitioner had with the CMD of the bank. It is apt to extract this part of the report hereinbelow:

> "It is found reasonable to believe that the subsequent note was put up by the C.O. after discussion with the CMD. However, it is difficult to believe that C.O. was not aware of the letter dated 04.02.1991 of FGFSL. Firstly, during the discussions with the CMD, the letter must have been discussed to justify deployment of staff. Moreover, it appears that the note was deliberately kept undated by the C.O. and the CMD also did not put any date while giving his remarks on the margin as this letter had not yet been placed before the Board of ABFSL."

The above extracted reasoning of the enquiry officer is wholly perverse. His finding that the petitioner deliberately kept the note undated is beyond the scope of the charge, as no such accusation is made against the petitioner in the charge. Once the enquiry officer believed the explanation of the petitioner that he had put up the note in question after discussion with the CMD, it is not known how the petitioner can be blamed for putting up such a note. If at all anything sinister could be gathered from the note in which business with FGFSL was anticipated, as rightly pointed out by the petitioner before the enquiry officer and the disciplinary authority, it is the CMD to whom

that should be attributed. Being a subordinate officer to the CMD, no exception could be taken to the petitioner running such a note on the instructions of his superior officer (CMD) by stating that ABFSL expects strong business relations with FGFSL in future.

As regards letter dated 04.02.1991, it is equally ununderstandable as to how the petitioner could be blamed merely for the reason that he handed over a copy of the said letter to the inspecting officials of the RBI during their inspection on 14.09.1992. Admittedly, the said letter was addressed by a Director of FGFSL to the CMD of the Bank, who is also the Chairman of ABFSL and it is he who placed it in the Board in its meeting held on 14.06.1991. Sri A.T. Akolkar, who issued the charge sheet to the petitioner, was also very much present and aware of the contents of the said letter. The petitioner had taken the stand that there is nothing objectionable in the contents of the said letter. Neither the enquiry officer nor the disciplinary or the appellate authorities specifically pointed out as to which part of the said letter is contrary to the guidelines of the RBI. Even assuming that its contents are objectionable, it passes one's comprehension as to how the petitioner could be blamed for "not taking steps to prevent ABFSL from violating RBI guidelines and failing to bring the facts to the notice of the Chairman and Managing Director of the bank and the Board of ABFSL/Andhra Bank". It needs no reiteration that the petitioner is only a Director of ABFSL and the management failed to bring out any material other than Ex.S.3 from which it can be concluded that the petitioner is saddled with the responsibility of taking steps to prevent ABFSL from violating RBI guidelines and bringing these facts to the notice of the Board of ABFSL and the Bank. If the contents of the letter dated 04.02.1991 are contrary to the guidelines of the RBI, the first person to blame, as

contended by the petitioner, is the Chairman and the next one is Sri A.T. Akolkar, who is far superior in rank to the petitioner, being the Executive Director of the Bank, while the petitioner was only a General Manager. If at all, there is collective failure on the part of the entire Board in not dealing with FGFSL in a proper and legal manner and the petitioner cannot be chosen to be axed as if the sole responsibility lies with him. I am wholly convinced that the findings of the enquiry officer as accepted by the disciplinary authority on charge No.2 are based on no evidence, but on mere inferences and conjectures of the enquiry officer which have no basis whatsoever.

Charges 3 and 4:

These charges also relate to the modus operandi adopted in the running of transactions involving sale and purchase of securities with the FGFSL. Under charge No.3 petitioner is blamed for not ensuring receipt of physicals and not reporting to the board of ABFSL and under charge No.4 the petitioner is accused of failing to ensure that the instructions issued by the RBI's letter dated 6.12.1990 whereunder the bank was required to place before its board at half yearly intervals the report on the activities of the subsidiary and business transacted by it and thereafter to send the report to the RBI. The findings on these charges are mainly based on the findings of the enquiry officer on charges 1 and 2 and his reasoning in holding that these charges are proved against the petitioner is almost identical to the reasoning given for charges 1 and 2, namely; that the petitioner by Ex.S3 office order dated 11.5.1991 was entrusted with the duty of looking after the financial subsidiary and that being General Manager In-charge of the Bank, it was his responsibility to oversee the operations of ABFSL.

In view of my elaborate discussion on charges 1 and 2, for the same reasons for which the findings of the enquiry officer on charges 1

and 2 were held unsustainable, the findings on charges 3 and 4 are also equally unsustainable. In order to avoid repetition, those reasons are not restated herein and it will suffice to hold that since the finding of the enquiry officer as accepted by the disciplinary and appellate authorities that the petitioner was vested with the responsibility of accomplishing the acts mentioned in charges 3 and 4 and his failure in this regard constituted misconduct has no basis at all. Therefore, for the same reasons as were given for charges 1 and 2, the petitioner cannot be said to be guilty of charges 3 and 4.

Charge No.5:

Accusation against the petitioner under this charge is his failure to ensure that ABFSL derived the benefit of training received by the three officials of ABFSL mentioned in the charge from FGFSL and that he also failed to ensure that proper accounting system was evolved and guidelines were framed and issued to branches in this regard. This charge is absolutely vague and so generic in nature that it is not possible for any charged officer to submit satisfactory explanation. The enquiry officer held that since it is the petitioner who had put up a note to the CMD for sending the three officials of ABFSL to FGFSL for training, it was his responsibility to ensure that the benefit of training was derived by the ABFSL. Under charge No.2 after a detailed discussion I have concluded that the note was prepared by the petitioner on the instructions of the Chairman. Further, I am unable to understand the rationale behind the reasoning of the enquiry officer. It is not as if the CMD was blind to the prevailing situation and he acted mechanically on the note put up by the petitioner. The charge per se does not impute motives to the petitioner behind putting up a note proposing to send the three officials to FGFSL. It is therefore, reasonable to presume that the petitioner would have bona fide made

the said proposal. Being the head of the organization, the decision whether to send the three officials for training or not squarely lay with the CMD and if the said decision has not yielded desired result, it is mainly the CMD who must be held responsible.

At any rate, while the charge itself as already held is vague to the core, the findings on this charge are wholly presumptuous. There is no evidence adduced to show that ABFSL has not derived the benefit of training received by its three employees from FGFSL and there is also no evidence to show that proper accounting system was evolved to be followed uniformly by all the branches of ABFSL. The conclusion arrived at by the enquiry officer in this regard appears to me to be his own fertile imagination not based on record. He failed to discuss as to in what respects and to what extent ABFSL could not derive the benefit of the 3 employees who were trained in FGFSL and what is the proper accounting system and how the accounting system of ABFSL is defective.

The second part of the charge that the petitioner had not acted diligently and monitored the functioning of ABFSL as the General Manager overseeing it and that this has exposed ABFSL to possible huge financial loss, cannot be sustained in view of my findings given earlier that by being the General Manager of the Bank, the petitioner was not responsible to oversee the functioning of ABFSL after the appointment of full time Managing Director, who, admittedly was entrusted with the day to day affairs of the company and this aspect was sadly ignored by the enquiry officer, the disciplinary authority and the appellate authority.

The findings rendered on each of the five charges were arrived at by me by applying the well-known parameters of judicial review of orders arising out of disciplinary proceedings. In dealing with this case

I have kept in view the well settled principles governing the subject. The Apex Court in a plethora of decisions held that while examining the orders passed by the departmental authorities in matters concerning disciplinary proceedings, the Courts/Tribunals do not act as appellate bodies; that unlike in criminal cases proof beyond reasonable doubt is not required in departmental proceedings and that preponderance of probabilities is enough to hold an employee guilty of misconduct; that the Courts/Tribunals would not re-appreciate the evidence and interfere with the orders of the departmental authorities merely because another view is possible and that strict rules of evidence are not applicable to disciplinary proceedings and where there is some legally admissible evidence available to support the finding of guilt, the Courts/Tribunal would not set aside the penalty imposed on the ground that the evidence available on record is not sufficient to sustain the order of penalty. See **STATE OF ANDHRA PRADESH VS. S. SREE RAMA RAO**[1], **STATE OF ANDHRA PRADESH VS. CHITRA VENKATA RAO**[2], **K. L. SHINDE VS. STATE OF MYSORE**[3], **JIWAN MAL KOCHAR VS. UNION OF INDIA**[4], **B.C.CHATURVEDI VS. UNION OF INDIA**[5], **HIGH COURT OF JUDICATURE AT BOMBAY THROUGH ITS REGISTRAR VS. SHASHIKANT S PATIL**[6], **INDIAN OIL CORPORATION LIMITED VS. ASHOK KUMAR ARORA**[7], **SOUTH BENGAL STATE TRANSPORT CORPN VS. SWAPAN KUMAR MITRA**[8].

The evidence available on record, both oral and documentary, was referred to by me with a view to examine whether the findings on any of the five charges were based on some legally acceptable

evidence or not and not with a view to re-appreciate the evidence. On a careful scrutiny of the entire material on record, the findings of the enquiry officer and the reasons recorded by the disciplinary and appellate authorities, I am of the considered view that the management of ABFSL had miserably failed to prove any of the charges against the petitioner on the basis of any legal evidence.

In **Tata Cellular Vs. Union of India**[9] the Supreme Court held that judicial review of an administrative action is concerned with the decision making process and not with the merits of the decision. Para-77 of the judgment to the extent it is relevant is extracted herebelow:

> "Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> (ii) Irrationality, namely, Wednesbury unreasonableness.
>
> (iii) Procedural impropriety."

While explaining what Wednesbury principle means, the Supreme Court in para-80 held:

> " 80. AT this stage, The Supreme court Practice, 1993, Vol. 1, pp. 849850, may be quoted :
>
> "4. Wednesbury principle. A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. ((1980) 41 P & CR 255 per Lord Greene, M. R.)"

The Supreme Court in pars-81 of the judgment explained the irrationality as under:

> “It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. v. secretary of State for Environment the secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional court analysed the factors which led the secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.. said that he could not see on what basis the Secretary of State had reached his conclusion.”

Applying the Wednesbury principle also, it is not possible to hold that on the nature of charges and the material available on record any authority taking a reasonable and logical view would reach a conclusion that the charges against the petitioner are based on any legally acceptable evidence in order to hold that they are proved against the petitioner.

For the aforementioned, reasons the writ petition is allowed and the orders dated 2.12.1994 and 15.4.1995 passed by respondents 2 and 1 respectively are set aside and the petitioner is entitled to all the service benefits in consequence thereof.

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C.V.NAGARJUNA REDDY,J

Dt : .07.2007
Es/Mdaa.

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[1] AIR 1963 SC 1723

[2] AIR 1975 SC 2151

[3] AIR 1976 SC 1080

[4] AIR 1983 SC 1102

[5] (1996) 6 SCC 750

[6] (2000) 1 SCC 416

[7] AIR 1997 SC 1030

[8] (2006) 2 SCC 584

[9] (1994) 6 SCC 651